

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ALDEN GOODE,

Defendant-Appellant.

UNPUBLISHED
February 28, 2008

No. 277103
Wayne Circuit Court
LC No. 06-004790-01

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of and sentence for possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with three counts of felonious assault, MCL 750.82, one count of carrying a concealed weapon, MCL 750.227, and one count of felony-firearm as a result of an altercation at a gathering. The trial court acquitted defendant of two counts of felonious assault, but convicted him of the remaining charges.

The trial court sentenced defendant to the mandatory term of two years in prison for felony-firearm, and to a concurrent term of one year of probation for the convictions of felonious assault and carrying a concealed weapon.

The proper interpretation of a statute presents a question of law that we review de novo on appeal. *People v Clark*, 463 Mich 459, 463 n 9; 619 NW2d 538 (2000).

MCL 750.227b provides in pertinent part:

(1) A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, section 227, 227a or 230, is guilty of a felony, and shall be imprisoned for 2 years. Upon a second conviction under this section, the person shall be imprisoned for 5 years. Upon a third or subsequent conviction under this subsection, the person shall be imprisoned for 10 years.

(2) A term of imprisonment prescribed by this section is in addition to the sentence imposed for the conviction of the felony or the attempt to commit the felony, and shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony.

A sentence for felony-firearm must be served consecutively with and prior to “any term of imprisonment imposed” for the underlying felony, MCL 750.227b(2); *People v Fortson*, 202 Mich App 13, 20-21; 507 NW2d 763 (1993), but not consecutively with a sentence imposed for any other offense. *Clark, supra* at 464. A probationary sentence cannot run consecutively with a term of imprisonment for felony-firearm. *People v Brown*, 220 Mich App 680, 682-685; 560 NW2d 80 (1996).

Defendant argues that his conviction of felony-firearm must be reversed and his sentence vacated because the offense of carrying a concealed weapon served as the underlying offense for the charge of felony-firearm. We disagree.

We affirm defendant’s conviction of and sentence for felony-firearm.¹ The information clearly states that the underlying felony for the charge of felony-firearm was felonious assault. Felonious assault is not among the offenses listed in MCL 750.227b(1) that cannot serve as an underlying felony for a charge of felony-firearm. Defendant’s argument is entirely without merit, and he is not entitled to relief.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Alton T. Davis

¹ Defendant does not challenge his convictions of felonious assault and carrying a concealed weapon.